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IN THE
COURT OF APPEALS OF INDIANA

SAVANAH BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0608-CR-703
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert Altice, Judge
Cause No. 49G02-0605-FB-87080

April 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Savanah Brown appeals her twelve-year sentence for battery resulting in serious bodily injury, a Class B felony. We affirm.

Issue

Brown raises two issues on appeal, which we combine and restate as whether the trial court properly sentenced her.

Facts

On March 18, 2006, nineteen-year-old Brown shook and squeezed P.B., her two-month-old son. As a result of Brown's abuse, P.B. suffered a fractured skull, fractured ribs, and fractured legs. On May 18, 2006, the State charged Brown with three counts of Class B felony battery resulting in serious bodily injury. The charging information filed against Brown alleged:

> COUNT I
>
> Savanah Brown, on or about March 18, 2006 . . . did knowingly touch . . . P.B.[] in a rude, insolent or angry manner, that is: shaking and squeezing P.B. which resulted in serious bodily injury to P.B., that is bone fractures;
>
> COUNT II
>
> Savanah Brown, on or about or between March 19, 2006 and April 15, 2006 . . . did knowingly touch . . . P.B.[] in a rude, insolent or angry manner, that is: shaking, and/or squeezing, and/or dropping P.B. which resulted in serious bodily injury to P.B., that is: bone fractures;
>
> COUNT III
>
> Savanah Brown, on or about April 16, 2006 . . . did knowingly touch . . . P.B.[] in a rude, insolent or angry

> manner, that is: dropping P.B. onto the floor, which resulted in serious bodily injury to P.B. that is: bone fractures . . . .

App. pp. 16-17.

Brown pled guilty to Count I on July 26, 2006, and the State dismissed Counts II and III. The trial court sentenced Brown to twelve years. Brown appeals her sentence.

Analysis

Brown committed this offense after our legislature replaced the "presumptive" sentencing scheme with the present "advisory" sentencing scheme. We are awaiting guidance from our supreme court as to how appellate review of sentences under the new "advisory" scheme should proceed and whether trial courts must continue issuing sentencing statements explaining the imposition of any sentence other than an advisory sentence. See Gibson v. State, 856 N.E.2d 142, 146-47 (Ind. Ct. App. 2006). This court has split on the issue of whether such statements still must be issued. Compare Fuller v. State, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006), trans. denied (holding that trial court is under no obligation to find or weigh any aggravating or mitigating circumstances) with McMahon v. State, 856 N.E.2d 743, 749 (Ind. Ct. App. 2006) (holding sentencing statements must be issued any time trial court deviates from advisory sentence).

Whether or not sentencing statements are required, it has been universally recognized that such statements are very helpful to this court in determining the appropriateness of a sentence under Indiana Appellate Rule 7(B). See Gibson, 856 N.E.2d at 147. The trial court here did issue a sentencing statement and we will utilize it to assist us in determining whether the sentence imposed here was inappropriate. Id.

Under Rule 7(B), we may revise a sentence that we conclude is inappropriate in light of the nature of the offense and the character of the offender.

The trial court here stated that it found as mitigating circumstances Brown's acceptance of responsibility, her young age, and her mental health. As aggravating, it noted the nature and circumstances of the crime, specifically the severity of the injuries suffered by a very young child. It also noted that Brown had a juvenile delinquency history but stated that "it's not extensive to the point that it needs to be an aggravating circumstance." Tr. p. 34. To the extent Brown claims the trial court failed to assign any mitigating weight to her mental illness, acceptance of responsibility, and youth, that is incorrect. The trial court did acknowledge those factors as having mitigating weight but found them to be outweighed by the aggravating nature and circumstances of the crime.

Brown also asserts the trial court improperly relied on the nature and circumstances of the crime as aggravating because it did not attempt to differentiate between the events that formed the basis of Count I of the information to which she pled guilty from the events that formed the basis of Counts II and III, which were dismissed. However, during the guilty plea colloquy, the trial court specifically asked Brown about the events of March 18, 2006, which related to Count I only. Brown admitted to shaking and squeezing P.B. on that date, and that her conduct resulted in several fractures of his legs and ribs, as well as a skull fracture. To the extent Brown seems to claim that some or all of those injuries actually might have occurred on a different date not covered by Count I of the information, Brown admitted causing those severe injuries to her two-month-old son. As the State points out, acts that do not result in convictions, particularly

where they indicate a pattern of ongoing crimes, may be given aggravating weight in considering the nature and circumstances of an offense. See Bluck v. State, 716 N.E.2d 507, 513 (Ind. Ct. App. 1999).

Having reviewed the sentencing statement offered by the trial court, we address whether Brown's sentence is inappropriate under Appellate Rule 7(B). We do this while considering as part of that equation the findings made by the trial court in its sentencing statement. We understand that this is, by necessity, part of our analysis here, but it does not limit the matters we may consider. See Gibson, 856 N.E.2d at 149; see also McMahon, 856 N.E.2d at 750 (noting that review under Rule 7(B) is not limited "to a simple rundown of the aggravating and mitigating circumstances found by a trial court.").

Rule 7(B) grants us the authority to revise an appellant's sentence if we conclude that sentence is inappropriate in light of the nature of the offense and the character of the offender. We first address Brown's character. We acknowledge that Brown's guilty plea, particularly in conjunction with the trial court's finding that she accepted responsibility for her actions, reflects favorably on her character. See Hope v. State, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

Evidence that Brown suffered from some form of mental illness also should be considered in assessing her character. Brown testified, and the presentence report reflects, that she suffers from depression and bipolar disorder and takes medication for those illnesses. She also attempted suicide during the course of the investigation into this case. However, no expert testimony or medical records were presented in support of Brown's mental illness claims.

Our supreme court has stated that there is a "need for a high level of discernment when assessing a claim that mental illness warrants mitigating weight." Covington v. State, 842 N.E.2d 345, 349 (Ind. 2005). Factors to consider in weighing the mitigating force of a mental health issue include the extent of the inability to control behavior, the overall limit on function, the duration of the illness, and the nexus between the illness and the crime. Id. There was evidence that Brown suffers from severe depression. There is no evidence in the record and the trial court did not find any evidence that Brown's ability to function or to control her behavior was negatively affected by her condition, nor was there any suggestion made by Brown that there was a nexus between her condition and the crime she committed. We believe the trial court was correct in acknowledging her poor mental health, but not weighing it heavily as a mitigating circumstance.[1]

On the negative side regarding Brown's character, she had frequent involvement with the juvenile delinquency system before turning eighteen, having had six referrals to juvenile court. However, she only had two true findings of delinquency, both for being a runaway. She had two other referrals for being a runaway, one for Class B misdemeanor disorderly conduct, and one for Class B misdemeanor battery; none of these referrals resulted in a delinquency adjudication. The aggravating weight of a criminal or juvenile delinquency history varies based on the gravity, nature, and number of prior offenses as they relate to the current offense. Taylor v. State, 840 N.E.2d 324, 341 (Ind. 2006). We

[1] We also note the trial court took Brown's mental illness into account when it ordered that she serve the last two years of her sentence in a community corrections mental health program so that she receives mental health treatment before she transitions back into the community.

believe the trial court correctly gave little weight to Brown's delinquency history in sentencing her for Class B felony battery, although we cannot say that history has zero relevance in assessing her character. See id.

Also negatively reflecting on Brown's character, she admitted that P.B. tested positive for marijuana when he was born.[2] Thus, she endangered P.B. not only by battering him, but also by smoking marijuana before he was born. Still, if we were to stop at this point in our analysis, we might conclude that any sentence exceeding the presumptive for Class B felony aggravated battery would be inappropriate, in light of Brown's guilty plea and mental illness and the lack of a major criminal history.

However, we cannot ignore the nature of the offense here. The circumstances surrounding this crime are quite simple but egregious. We find them to be particularly cruel and inexcusable. Brown violated the vital position of trust she held over P.B. as his mother, which is significantly aggravating. See Hart v. State, 829 N.E.2d 541, 544 (Ind. Ct. App. 2005) ("There is no greater position of trust than that of a parent to his [or her] own young child."). P.B.'s very young age also warrants significant aggravating weight in assessing the nature of this offense; he was completely unable to defend himself from Brown's conduct. See Ray v. State, 838 N.E.2d 480, 492 (Ind. Ct. App. 2005). The multiple fractures P.B. suffered, while fortunately not fatal, must have been excruciatingly painful. The brutal manner in which Brown abused her infant son justifies

[2] There was testimony that P.B. actually tested positive for cocaine when he was born; Brown denied this but stated that he tested positive for marijuana.

her twelve-year sentence. That sentence is appropriate in light of Brown's character, which is not overwhelmingly positive, and the heinous circumstances of the crime.

Conclusion

Brown's twelve-year sentence is appropriate. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.